

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

LS-9102261-MED

SCOTT ALLEN HOFTIEZER, M.D.,

Respondent

FINAL DECISION AND ORDER

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Scott Allen Hoftiezer, M.D.
8258 Cascade Court
Franklin, WI 53232

Medical Examining Board
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

This case was initiated by the filing of a complaint with the Medical Examining Board on February 26, 1991. A disciplinary proceeding was scheduled for March 26, 1991. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and served by certified mail on Dr. Hoftiezer, who received it on February 27, 1991.

On March 5, 1991, the Medical Examining Board suspended Dr. Hoftiezer's license to practice medicine and surgery in Wisconsin, summarily and indefinitely.

On March 20, 1991, the parties presented a proposed stipulation to the Medical Examining Board, which was rejected by the board. The disciplinary proceeding was thereafter held on April 24, 1991. Dr. Hoftiezer appeared in person, and was represented by Attorneys William Callahan and William Mulligan of Davis

and Kuelthau, 111 E. Kilbourne Ave., Suite 1400, Milwaukee, WI 53202. The Medical Board was represented by Attorney Arthur Thexton of the Department of Regulation and Licensing's Division of Enforcement.

The Proposed Decision of the Administrative Law Judge was filed on May 13, 1991. Dr. Hoftiezer filed his objections to the Proposed Decision on May 26, 1991, and appeared with counsel at the board's meeting of June 20, 1991, for oral arguments on the objections. The matter was initially considered by the board on that date, with the matter being ultimately tabled until the board's meeting of July 24, 1991.

Based upon the entire record of this matter, the Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Respondent, Scott Allen Hoftiezer, M.D., resides at 8258 Cascade Court, Franklin, Wisconsin, and holds license number 26625 to practice medicine and surgery in the State of Wisconsin. This license was granted by the Medical Examining Board, although at the time of the hearing in this matter it had been suspended.
2. Allegations of unprofessional conduct by Dr. Hoftiezer were filed with the Medical Examining Board in a complaint dated February 26, 1991.
3. Dr. Hoftiezer's license was originally limited by the Board on March 29, 1985, to require that he practice only within the residency training program at Medical College of Wisconsin, that he continue to participate in the impaired professionals program of the Milwaukee Psychiatric Hospital, that he submit weekly urine screens, and that he not hold a DEA registration number. That limited license was renewed on March 5, 1986, with the modifications that he be allowed to practice at Sheboygan Family Medicine Associates, and that he be allowed to hold a DEA number.
4. On January 1, 1987, Dr. Hoftiezer notified the Board that he would not apply for a renewal of his limited license, as he had suffered a relapse.
5. On September 10, 1987, Dr. Hoftiezer petitioned the Board for reinstatement of his limited license. This request was granted on October 20, 1987, and his limited license was reinstated, allowing him to practice at Family Health Plan of Milwaukee, but again prohibiting him from holding a DEA number. That limited license was renewed on October 5, 1988, with the modification requested by Dr. Hoftiezer that he be allowed to hold a DEA number. On September 27, 1989, Dr. Hoftiezer appeared before the Board in support of his request for further renewal of his limited license, but the Board tabled the action until records from Addictive Disease Medical Consultants, S.C. were received and reviewed. The Board then again renewed Dr. Hoftiezer's

limited license on December 28, 1989.

6. In the period of January 1990 to June 1990, during which the unprofessional conduct alleged in this proceeding occurred, Dr. Hoftiezer's license was limited as follows:

- (1) Hoftiezer may practice only at Family Health Plan Health Centers, Milwaukee, Wisconsin, under the supervision of James R. Chaillet, Jr., M.D., Medical Director.
- (2) Hoftiezer shall abstain from any and all personal use of alcohol or controlled substances.
- (3) Hoftiezer shall provide weekly random urine specimens for alcohol and drug screening.
- (4) Hoftiezer shall attend AA or NA meetings on at least a twice-weekly basis.
- (5) Hoftiezer shall provide for quarterly reports to the board prepared by Dr. Chaillet setting forth Hoftiezer's activities and progress in his employment.
- (6) Hoftiezer shall continue in treatment with Addictive Disease Medical Consultants under the supervision of Dr. Ronald Herrington. Hoftiezer shall provide for quarterly reports to the board prepared by Dr. Herrington setting forth Dr. Hoftiezer's progress in treatment.
- (7) Dr. Hoftiezer shall provide current releases to the treatment facility and personnel, complying with state and federal laws, authorizing release of all his medical and treatment records to the Medical Examining Board. Copies of said releases shall be filed simultaneously with the board.
- (8) Dr. Chaillet, Dr. Herrington and Dr. Hoftiezer shall report immediately to the Medical Examining Board any suspected violation of this order. Upon a finding by the board of probable cause to believe that such violation has occurred, the board may order summary suspension of the limited license, and upon being notified of such summary suspension, applicant shall immediately desist from further practice of medicine and shall return his license to the Medical Examining Board forthwith."

7. On a certain day in January, 1990, Dr. Hoftiezer consumed an alcohol-containing substance (benedryl elixir).

8. On a certain day in January, 1990, Dr. Hoftiezer consumed an alcohol-containing substance (vanilla extract).

9. On a certain day in February, 1990, Dr. Hoftiezer obtained Percocet, a Schedule II controlled substance, from a family member without that person's permission, and consumed it, not in the course of legitimate medical practice.

10. On April 10, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample.

11. On April 11, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample.

12. On a certain day in May, 1990, Dr. Hoftiezer obtained Tylenol with Codeine elixir, a Schedule V controlled substance, by writing a prescription for a family member, and consumed it, not in the course of legitimate medical practice.

13. On May 15, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample.

14. On May 23, 1990, Dr. Hoftiezer obtained Tylenol with Codeine, a Schedule IV controlled substance, from a relative without that person's permission, and consumed it, not in the course of legitimate medical practice.

15. On May 26, 1990, Dr. Hoftiezer obtained Wygesic, a Schedule III controlled substance, from a relative, Michael Friedrichs, without that person's permission, and consumed it, not in the course of legitimate medical practice.

16. On May 27, 1990, Dr. Hoftiezer obtained and later consumed 10 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

17. On May 30, 1990, Dr. Hoftiezer obtained and later consumed 10 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

18. On June 1, 1990, Dr. Hoftiezer obtained and later consumed 20 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

19. On June 2, 1990, Dr. Hoftiezer obtained and later consumed 15 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

20. On June 2, 1990, Dr. Hoftiezer obtained and consumed Wygesic, a Schedule III controlled substance, from a relative without that person's permission, and consumed it, not in the course of legitimate medical practice.

21. On June 4, 1990, Dr. Hoftiezer obtained and later consumed 20 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

22. On June 5, 1990, Dr. Hoftiezer obtained and later consumed 30 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

23. On June 6, 1990, Dr. Hoftiezer obtained and later consumed 25 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

24. On June 7, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample.

25. On June 8, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample.

26. On June 9, 1990, Dr. Hoftiezer obtained and later consumed 25 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

27. On June 11, 1990, Dr. Hoftiezer obtained and later consumed 25 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

28. On June 12, 1990, Dr. Hoftiezer obtained and later consumed 30 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

29. On June 14, 1990, Dr. Hoftiezer obtained and later consumed 40 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

30. On June 14, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample.

31. On June 19, 1990, Dr. Hoftiezer obtained and later consumed 50 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice.

32. Dr. Hoftiezer was arrested in 1984 on a charge related to the use of controlled substances. Dr. Hoftiezer was not prosecuted criminally, and participated in a diversion program at DePaul Hospital for two years.

33. In late 1986, Dr. Hoftiezer was fired from employment with Sheboygan Family Practice Associates for activity related to the use of controlled substances, and subsequently received treatment from the McBride Center at Milwaukee Psychiatric Hospital.

34. In 1989, after office staff noticed his abuse of over-the-counter cough medication, and at the insistence of the Medical Director of the Family Health Plan's airport office, Dr. Hoftiezer entered treatment again at the McBride Center.

35. On June 20, 1990, after he was discovered submitting a false urine sample, and at the insistence of the Medical Director of the Family Health Plan, Dr. Hoftiezer again entered treatment at Milwaukee Psychiatric Hospital.

36. After entering treatment in June 1990, Dr. Hoftiezer received approximately 30 days of in-patient treatment. This consisted of daily A.A. or N.A. meetings, daily group therapy sessions, education seminars, seminars and group discussions with other patients, the group living situation, and regular urine screens. Upon release from in-patient treatment on July 17, 1990, he received approximately 120 days of treatment through the Recovery House. This consisted of daily group sessions, other group sessions including a men's group, a doctors' group, and a Tuesday night support group, daily A.A. meetings, community and volunteer work, and prescribed use of imipramine and trexan. Subsequent to his release on November 15, 1990, he has continued treatment. This consists of Tuesday night support group meetings, doctors' group meetings, regular attendance at A.A. meetings, meetings with Dr. Teresa Reed every two to four weeks, regular contact with his A.A. sponsor, monthly meetings with Dr. Randall Zblewski, random observed urine screens, and prescribed use of trexan and imipramine. Dr. Hoftiezer has not relapsed since this treatment.

37. Dr. Randall Zblewski, a psychiatrist, diagnosed Dr. Hoftiezer while he was in in-patient treatment in late June 1990 as suffering from a depressive disorder. This condition had previously been undiagnosed, even though Dr. Zblewski considered it likely that Dr. Hoftiezer had suffered from it since his high school years. Dr. Zblewski

prescribed imipramine, 100 mg daily, and continues to prescribe it for Dr. Hoftiezer. Dr. Hoftiezer's symptoms of depression have subsided.

38. Depression and substance abuse can interact and exacerbate each other. Alleviating one can positively affect the other.

39. While at his most recent place of employment, Family Health Plan, practicing as a family practice physician at the airport facility and as an urgent care physician at the Edgerton office, the Blue Mound office and the Silver Spring office, Dr. Hoftiezer's care and treatment of patients has been appropriate and adequate. No patient complaints have been registered there. The administration of that organization is willing to have Dr. Hoftiezer continue as an employee, and is willing to monitor his practice as required under the terms of the disposition proposed in exhibit 6.

CONCLUSIONS OF LAW

1. The Medical Examining Board has both personal and subject-matter jurisdiction of this matter. This is based on the above facts 1 and 2, and upon sec. 448.02(3), Wis. Stats., which states:

(a) The (Medical Examining) board shall investigate allegations of unprofessional conduct and negligence in treatment by persons holding a license, certificate or limited permit granted by the board. . . .

(b) After an investigation, if the board finds that there is probable cause to believe that the person is guilty of unprofessional conduct or negligence in treatment, the board shall hold a hearing on such conduct. . . .

(c) After a disciplinary hearing, the board may, . . . when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. . . .

2. Dr. Hoftiezer is in default based upon respondent's withdrawal of his Answer and upon RL 2.14, Wis. Adm. Code, which states:

If the respondent fails to answer as required by RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the board may make findings and enter an order on the basis of the complaint and other evidence. . . .

3. Dr. Hoftiezer is guilty of unprofessional conduct. This is based on the above facts 3 through 31; and upon sec. 448.01(11), Wis. Stats., which states:

"Unprofessional conduct" means those acts or attempted acts of commission or omission defined as unprofessional conduct by the board under the authority delegated to the board under sec. 15.08 (5)(b) and any act by a physician or podiatrist in violation of ch. 161 or 450;

and upon MED 10.02(2), Wis. Adm. Code, which states:

The term "unprofessional conduct" is defined to mean and include but not be limited to the following . . . :

* * * *

(b) Violating or attempting to violate any term, provision, or condition of any order of the board.

* * * *

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

* * * *

(p) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 161.01 (4), Stats. otherwise than in the course of legitimate professional practice, or as otherwise prohibited by law.

Facts 7 and 8 each constitute unprofessional conduct as defined in MED 10.02(2)(b) and (h). Facts 9, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 31 each constitute unprofessional conduct as defined in MED 10.02(2)(b), (h) and (p). Facts 10, 11, 13, 24, 25, and 30 each constitute unprofessional conduct as defined in MED 10.02(2)(b).

ORDER

NOW, THEREFORE, IT IS ORDERED that the summary suspension of the license of Scott Allen Hoftiezer, M.D., to practice medicine and surgery in Wisconsin is hereby lifted.

IT IS FURTHER ORDERED that the license of Scott Allen Hoftiezer, M.D., to practice medicine and surgery in Wisconsin is hereby limited as follows:

1. Respondent may practice only at Family Health Plan Health Centers, Milwaukee, Wisconsin, under the supervision of James R. Chaillet Jr., M.D., Medical Director.

2. Respondent shall complete the chemical dependency treatment program at the McBride Center for Impaired Professionals, Milwaukee, Wisconsin, under the supervision of Dr. David Benzer or his designee, and shall not disassociate himself from the program until formally discharged by his treatment supervisor with the approval of the board.

3. As a part of his treatment program, respondent shall submit to a program of random witnessed monitoring of his blood or urine for the presence of alcohol and controlled substances on at least a twice per week basis.

4. Respondent shall continue in treatment with a psychiatrist satisfactory to the board for treatment of depression on a schedule as recommended by the treating psychiatrist.

5. Respondent shall abstain from any and all personal use of alcohol or controlled substances, as defined by Wis. Stats. sec. 161.01(4), unless prescribed for him by his treating physician.

6. Respondent shall not apply for or hold a DEA registration during the term of the limited license.

7. Respondent shall attend A.A. or N.A. meetings on a schedule as determined by his treatment supervisor at McBride.

8. Respondent shall be responsible for submission to the board of formal written quarterly reports prepared by his treatment supervisor setting forth respondent's activities and progress in the treatment program, including the results of random drug screens.

9. Respondent shall be responsible for submission to the board of formal written quarterly reports from his treating psychiatrist setting forth respondent's progress in therapy.

10. Respondent shall be responsible for submission of quarterly written reports from his Dr. James R. Chaillet setting forth respondent's activities and performance in his employment.

11. Upon request of the board, respondent shall provide current releases to any affected treatment facilities, complying with federal and state law, authorizing release of all of his medical and treatment records to the board. Copies of said releases shall be filed simultaneously with the board.

12. The term of the license shall be for one year from the date of this Order. Respondent may apply at the end of one year for renewal of the license. Respondent shall appear before the board at the end of six months and at the end of one year.

13. *Violation of any of the terms and conditions of this Order shall result in summary suspension of the license and shall be deemed as grounds for revocation of the license.*

EXPLANATION OF VARIANCE

The board has adopted the Administrative Law Judge's Findings of Fact and Conclusions of Law, but has not accepted the judge's recommendation that Dr. Hoftiezer's license be revoked. While revocation would be justified in this case, the board takes note of the fact that since his most recent inpatient treatment beginning in June, 1990, Dr. Hoftiezer's recovery has thus far been uninterrupted. Given that this period of apparent abstinence has come during a time of undoubted stress occasioned by these proceedings and the resultant suspension of Dr. Hoftiezer's license, the board is mildly optimistic over his chances for ongoing recovery. The board also notes that throughout the course of Dr. Hoftiezer's struggle with addiction, there has never been any allegation that his professional performance has been less than competent. Accordingly, the board has decided to reinstate the limited license. It should be pointed out, however, that the emphasis provided at subparagraph 13 of the ordered limitations is not inadvertent.

Dated this 2 day of August, 1991.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Michael P. Mehr M.D.
Michael P. Mehr, M.D.
Secretary

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is August 9, 1991.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

BEFORE THE STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

SCOTT ALLEN HOFTIEZER, M.D.,
RESPONDENT

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:
:
NOTICE OF FILING
PROPOSED DECISION
LS9102261MED

TO: William Mulligan
Davis & Kuelthau
111 E. Kilbourne Ave., Suite 1400
Milwaukee, WI 53202
Certified P 568 984 607

Arthur Thexton
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

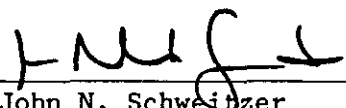
PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Medical Examining Board, Room 176, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before May 28, 1991. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Medical Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together, with any objections and arguments filed, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 14th day of May, 1991.



John N. Schweitzer
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9102261-MED
SCOTT ALLEN HOFTIEZER, M.D.,	:	
RESPONDENT	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Scott Allen Hoftiezer, M.D.
8258 Cascade Court
Franklin, WI 53232

Medical Examining Board
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

POSTURE OF CASE

A. This case was initiated by the filing of a complaint with the Medical Examining Board on February 26, 1991. A disciplinary proceeding ("hearing") was scheduled for March 26, 1991. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and served by certified mail on Dr. Hoftiezer, who received it on February 27, 1991.

B. On March 5, 1991, the Medical Examining Board suspended Dr. Hoftiezer's license to practice medicine and surgery in Wisconsin, summarily and indefinitely.

C. On March 20, 1991, the parties presented a proposed stipulation to the Medical Examining Board, which was rejected. The terms of this proposed stipulation were not disclosed to the Administrative Law Judge in this proceeding.

D. Following the Board's rejection of the proposed stipulation, a prehearing conference was conducted by telephone on March 21, 1991, at which time respondent's attorney, William Mulligan, requested that the hearing be

rescheduled to allow the parties to complete discovery and attempt to simplify factual issues. The hearing was rescheduled for April 24, 1991. The parties also agreed that the respondent would file his answer by mail by March 25, 1991. The answer, denying certain allegations of the complaint, was filed as agreed.

E. A motion for change of location of hearing was filed by respondent's attorney along with a supporting affidavit on April 9, 1991. The motion was granted on April 16, 1991, and the hearing location was designated as the State Office Building in Waukesha, WI.

F. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as re-scheduled on April 24, 1991. Dr. Hoftiezer appeared in person, and represented by Attorneys William Callahan and William Mulligan of Davis and Kuelthau, 111 E. Kilbourne Ave., Suite 1400, Milwaukee, WI 53202. The Medical Board was represented by Attorney Arthur Thexton of the Department of Regulation and Licensing's Division of Enforcement. That disciplinary proceeding forms the basis for this proposed order.

G. During the hearing, counsel for both parties stated that there would be no testimony regarding the facts alleged in the complaint. Procedurally, and to avoid increasing their client's exposure to criminal prosecution, Mr. Mulligan and Mr. Callahan withdrew their answer. This allowed the Administrative Law Judge, under RL 2.14, Wis. Adm. Code, to find the respondent in default and to make findings of fact based on the complaint and other evidence presented at the hearing.

FINDINGS OF FACT

Facts Regarding Jurisdiction:

1. The Respondent, Scott Allen Hoftiezer, M.D., resides at 8258 Cascade Court, Franklin, Wisconsin, and holds license number 26625 to practice medicine and surgery in the State of Wisconsin. This license was granted by the Medical Examining Board, although at the time of the hearing in this matter it had been suspended.

2. Allegations of unprofessional conduct by Dr. Hoftiezer were filed with the Medical Examining Board in a complaint dated February 26, 1991.

Facts Regarding Unprofessional Conduct (and Relevant to Discipline):

3. Dr. Hoftiezer's license was originally limited by the Board on March 29, 1985, to require that he practice only within the residency training program at Medical College of Wisconsin, that he continue to participate in the impaired professionals program of the Milwaukee Psychiatric Hospital, that he submit weekly urine screens, and that he not hold a DEA registration number. That limited license was renewed on March 5, 1986, with the modifications that he be allowed to practice at Sheboygan Family Medicine Associates, and that he be allowed to hold a DEA number (exhibit 1).

4. On January 1, 1987, Dr. Hoftiezer notified the Board that he would not apply for a renewal of his limited license, as he had suffered a relapse (exhibit 1).

5. On September 10, 1987, Dr. Hoftiezer petitioned the Board for reinstatement of his limited license. This request was granted on October 20, 1987, and his limited license was reinstated, allowing him to practice at Family Health Plan of Milwaukee, but again prohibiting him from holding a DEA number. That limited license was renewed on October 5, 1988, with the modification requested by Dr. Hoftiezer that he be allowed to hold a DEA number. On September 27, 1989, Dr. Hoftiezer appeared before the Board in support of his request for further renewal of his limited license, but the Board tabled the action until records from Addictive Disease Medical Consultants, S.C. were received and reviewed. The Board then again renewed Dr. Hoftiezer's limited license on December 28, 1989 (exhibit 1).

6. In the period of January 1990 to June 1990, during which the unprofessional conduct alleged in this proceeding occurred, Dr. Hoftiezer's license was limited as follows:

- "(1) Hoftiezer may practice only at Family Health Plan Health Centers, Milwaukee, Wisconsin, under the supervision of James R. Chaillet, Jr., M.D., Medical Director.
- (2) Hoftiezer shall abstain from any and all personal use of alcohol or controlled substances.
- (3) Hoftiezer shall provide weekly random urine specimens for alcohol and drug screening.
- (4) Hoftiezer shall attend AA or NA meetings on at least a twice-weekly basis.
- (5) Hoftiezer shall provide for quarterly reports to the board prepared by Dr. Chaillet setting forth Hoftiezer's activities and progress in his employment.
- (6) Hoftiezer shall continue in treatment with Addictive Disease Medical Consultants under the supervision of Dr. Ronald Herrington. Hoftiezer shall provide for quarterly reports to the board prepared by Dr. Herrington setting forth (sic) Dr. Hoftiezer's progress in treatment.
- (7) Hoftiezer shall provide current releases to the treatment facility and personnel, complying with state and federal laws, authorizing release of all his medical and treatment records to the Medical Examining Board. Copies of said releases shall be filed simultaneously with the board.
- (8) Dr. Chaillet, Dr. Herrington and Dr. Hoftiezer shall report immediately to the Medical Examining Board any suspected violation of this order. Upon a finding by the board of probable cause to believe that such violation has occurred, the board may order summary suspension of the limited license, and upon being notified of such summary suspension, applicant shall immediately desist from further practice of medicine and shall return his license to the Medical Examining Board forthwith."

(exhibit 1.)

7. On a certain day in January, 1990, Dr. Hoftiezer consumed an alcohol-containing substance (benedryl elixir) (exhibit 2).
8. On a certain day in January, 1990, Dr. Hoftiezer consumed an alcohol-containing substance (vanilla extract) (exhibit 2).
9. On a certain day in February, 1990, Dr. Hoftiezer obtained Percocet, a Schedule II controlled substance, from a family member without that person's permission, and consumed it, not in the course of legitimate medical practice (exhibit 2).
10. On April 10, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample. (exhibit 3).
11. On April 11, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample. (exhibit 3).
12. On a certain day in May, 1990, Dr. Hoftiezer obtained Tylenol with Codeine elixir, a Schedule V controlled substance, by writing a prescription for a family member, and consumed it, not in the course of legitimate medical practice (exhibit 2).
13. On May 15, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample. (exhibit 3).
14. On May 23, 1990, Dr. Hoftiezer obtained Tylenol with Codeine, a Schedule IV controlled substance, from a relative without that person's permission, and consumed it, not in the course of legitimate medical practice (exhibit 2).
15. On May 26, 1990, Dr. Hoftiezer obtained Wygesic, a Schedule III controlled substance, from a relative, Michael Friedrichs, without that person's permission, and consumed it, not in the course of legitimate medical practice (exhibit 2).
16. On May 27, 1990, Dr. Hoftiezer obtained and later consumed 10 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).
17. On May 30, 1990, Dr. Hoftiezer obtained and later consumed 10 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).

18. On June 1, 1990, Dr. Hoftiezer obtained and later consumed 20 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).
19. On June 2, 1990, Dr. Hoftiezer obtained and later consumed 15 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).
20. On June 2, 1990, Dr. Hoftiezer obtained and consumed Wygesic, a Schedule III controlled substance, from a relative without that person's permission, and consumed it, not in the course of legitimate medical practice (exhibit 2).
21. On June 4, 1990, Dr. Hoftiezer obtained and later consumed 20 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).
22. On June 5, 1990, Dr. Hoftiezer obtained and later consumed 30 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).
23. On June 6, 1990, Dr. Hoftiezer obtained and later consumed 25 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).
24. On June 7, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample. (exhibit 3).
25. On June 8, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample. (exhibit 3).
26. On June 9, 1990, Dr. Hoftiezer obtained and later consumed 25 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).
27. On June 11, 1990, Dr. Hoftiezer obtained and later consumed 25 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).

28. On June 12, 1990, Dr. Hoftiezer obtained and later consumed 30 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).

29. On June 14, 1990, Dr. Hoftiezer obtained and later consumed 40 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).

30. On June 14, 1990, Dr. Hoftiezer submitted a urine sample for alcohol and drug screening which was not his own, falsely representing it to be his own, having forged the name of R. Musni, M.D. on the "Witness Verification Form" for the urine sample. (exhibit 3).

31. On June 19, 1990, Dr. Hoftiezer obtained and later consumed 50 @ Vicodin, a Schedule IV controlled substance, by writing a prescription for Michael Friedrichs, which was not in the course of legitimate medical practice (exhibit 3).

Additional Facts Related to Discipline:

32. Dr. Hoftiezer was arrested in 1984 on a charge related to the use of controlled substances. Dr. Hoftiezer was not prosecuted criminally, and participated in a diversion program at DePaul Hospital for two years.

33. In late 1986, Dr. Hoftiezer was fired from employment with Sheboygan Family Practice Associates for activity related to the use of controlled substances, and subsequently received treatment from the McBride Center at Milwaukee Psychiatric Hospital.

34. In 1989, after office staff noticed his abuse of over-the-counter cough medication, and at the insistence of the Medical Director of the Family Health Plan's airport office, Dr. Hoftiezer entered treatment again at the McBride Center.

35. On June 20, 1990, after he was discovered submitting a false urine sample, and at the insistence of the Medical Director of the Family Health Plan, Dr. Hoftiezer again entered treatment at Milwaukee Psychiatric Hospital,

36. After entering treatment in June 1990, Dr. Hoftiezer received approximately 30 days of in-patient treatment. This consisted of daily A.A. or N.A. meetings, daily group therapy sessions, education seminars, seminars and group discussions with other patients, the group living situation, and regular urine screens. Upon release from in-patient treatment on July 17, 1990, he received approximately 120 days of treatment through the Recovery House. This consisted of daily group sessions, other group sessions including a men's group, a doctors' group, and a Tuesday night support group, daily A.A. meetings, community and volunteer work, and prescribed use of imipramine and

trexan. Subsequent to his release on November 15, 1990, he has continued treatment. This consists of Tuesday night support group meetings, doctors' group meetings, regular attendance at A.A. meetings, meetings with Dr. Teresa Reed every two to four weeks, regular contact with his A.A. sponsor, monthly meetings with Dr. Randall Zblewski, random observed urine screens, and prescribed use of trexan and imipramine. Dr. Hoftiezer has not relapsed since this treatment.

37. Dr. Randall Zblewski, a psychiatrist, diagnosed Dr. Hoftiezer while he was in in-patient treatment in late June 1990 as suffering from a depressive disorder. This condition had previously been undiagnosed, even though Dr. Zblewski considered it likely that Dr. Hoftiezer had suffered from it since his high school years. Dr. Zblewski prescribed imipramine, 100 mg daily, and continues to prescribe it for Dr. Hoftiezer. Dr. Hoftiezer's symptoms of depression have subsided.

38. Depression and substance abuse can interact and exacerbate each other. Alleviating one can positively affect the other.

39. While at his most recent place of employment, Family Health Plan, practicing as a family practice physician at the airport facility and as an urgent care physician at the Edgerton office, the Blue Mound office and the Silver Spring office, Dr. Hoftiezer's care and treatment of patients has been appropriate and adequate. No patient complaints have been registered there. The administration of that organization is willing to have Dr. Hoftiezer continue as an employee, and is willing to monitor his practice as required under the terms of the disposition proposed in exhibit 6.

CONCLUSIONS OF LAW

I. The Medical Examining Board has both personal and subject-matter jurisdiction of this matter. This is based on the above facts 1 and 2, and upon sec. 448.02(3), Wis. Stats., which states:

(a) The (Medical Examining) board shall investigate allegations of unprofessional conduct and negligence in treatment by persons holding a license, certificate or limited permit granted by the board. ...

(b) After an investigation, if the board finds that there is probable cause to believe that the person is guilty of unprofessional conduct or negligence in treatment, the board shall hold a hearing on such conduct. ...

(c) After a disciplinary hearing, the board may, ... when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. ...

II. Dr. Hoftiezer is in default. This is based on paragraph G above under "Posture of Case," and upon RL 2.14, Wis. Adm. Code, which states:

If the respondent fails to answer as required by RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the board may make findings and enter an order on the basis of the complaint and other evidence. ...

III. Dr. Hoftiezer is guilty of unprofessional conduct. This is based on the above facts 3 through 31; and upon sec. 448.01(11), Wis. Stats., which states:

"Unprofessional conduct" means those acts or attempted acts of commission or omission defined as unprofessional conduct by the board under the authority delegated to the board under sec. 15.08 (5)(b) and any act by a physician or podiatrist in violation of ch. 161 or 450;

and upon MED 10.02(2), Wis. Adm. Code, which states:

The term "unprofessional conduct" is defined to mean and include but not be limited to the following

...

(b) Violating or attempting to violate any term, provision, or condition of any order of the board.

...

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

...

(p) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 161.01 (4), Stats. otherwise than in the course of legitimate professional practice, or as otherwise prohibited by law.

....

Facts 7 and 8 each constitute unprofessional conduct as defined in MED 10.02 (b) and (h). Facts 9, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 31 each constitute unprofessional conduct as defined in MED 10.02 (b), (h) and (p). Facts 10, 11, 13, 24, 25, and 30 each constitute unprofessional conduct as defined in MED 10.02 (b).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license issued to the respondent, Scott Allen Hoftiezer, M.D., be revoked, as of the date this order is signed. Dr. Hoftiezer may apply to the Board under sec. 448.02(6), Wis. Stats. at any time after June 1992, and the Board may in its discretion at that time restore his license on such terms and conditions as it deems appropriate.

FURTHER, IT IS ORDERED that the costs of this proceeding be assessed against Dr. Hoftiezer.

OPINION

Dr. Hoftiezer is guilty of unprofessional conduct, and his record as a well-regarded family practitioner is darkened in the shadow of his continued substance abuse. The episode from January through June of 1990 which is the subject of this disciplinary proceeding was his third admitted relapse within four years after he completed a diversion program from criminal prosecution in 1986. As he describes this most recent episode in exhibit 2, he was basically out of control, obtaining alcohol or controlled substances on at least 19 separate occasions over a period of five months, sometimes in quantities as large as 50 doses at a time. While he was engaged in this activity, he wrote false prescriptions, forged another doctor's signature to witness verification forms, and submitted six falsified urine samples, until an anomaly in one of the urine samples led to his discovery.

The first time Dr. Hoftiezer's substance abuse problem came to the Board's attention was after he was arrested in 1984. The Board in 1985 allowed Dr. Hoftiezer to retain his license, with limitations. As mentioned later in this decision, such an action was consistent with Board actions in other first-offense cases. The second time Dr. Hoftiezer's substance abuse problem came to the Board's attention was after he was fired from Sheboygan Family Medicine Associates in 1986, when he informed the Board that he would not apply to have his limited license renewed. No Board action was necessary or taken at that time, and his license lapsed. However, when Dr. Hoftiezer subsequently petitioned for reinstatement in September of 1987, the Board granted him a limited license on essentially the same terms as originally granted, except for the location of his employment. This action was also consistent with Board actions in other repeat-offense cases, although a majority of such cases over the past ten years have resulted in revocation or voluntary surrender of the license.

The record in this proceeding does not establish whether Dr. Hoftiezer's relapse in 1989 came to the Board's attention when office staff reported his abuse of over-the-counter cough medicine, although it was at this time that the Board tabled a request for license renewal until records from Addictive Disease Medical Consultants, S.C. were received and reviewed. Nevertheless, because the record is unclear on this point, I base my discussion of the Board's actions on the premise that the most recent conduct was the third, rather than the fourth, time that Dr. Hoftiezer's substance abuse problem has come to the Board's attention for some type of action. Even being the third time, however, the Board is faced with a situation of unusual gravity.

Board Decisions in Other Cases

A review of the Medical Examining Board's decisions over the past ten years in disciplinary cases involving unprofessional conduct based on abuse of alcohol or controlled substances shows the following:

- 27 cases were first offenses, the first time the practitioner had been before the board:
 - 7 of these cases were from other states:
 - 2 voluntarily surrendered their licenses,
 - 1 application for renewal after voluntary surrender was denied,
 - 2 were revoked by default, and
 - 2 were granted limited licenses;
 - 20 of these cases were Wisconsin practitioners:
 - 16 were granted limited licenses, and
 - 4 voluntarily surrendered their licenses;
- 12 cases were repeat offenses, violations of limited licenses previously issued:
 - 2 of these were revoked (Carponter, 5/21/87; Flynn, 3/11/83),
 - 5 of these voluntarily surrendered their licenses (Hobson, LS-8912291-MED; Anderson, 8/19/87; Erickson, 3/6/85; Koop, 3/8/84; Dwan, 1/30/84), and
 - 5 of these were allowed to retain a limited license (Douglas, LS-8812293-MED; Helf, LS-8709031-MED; Black, 12/11/86; Andringa, 5/23/85; Hauser, 5/24/84).

John Carponter's limited license was revoked after he failed to comply with three of the conditions on his license, that he enroll and participate in the McBride Center's Impaired Professionals program (which he said he could not afford), that he surrender his DEA license within ten days (although he did so later), and that he file copies of all releases with the board (which he said he thought had been done). Richard Flynn's limited license was revoked after he failed to abide by the conditions of the Impaired Physicians Program at DePaul Hospital, including failing to attend some A.A. meetings, declining to provide urine samples as requested with the excuse that he did not have money for gas, and failing to follow the advice of the DePaul Medical Director to enter inpatient treatment, despite an offer of financial assistance.

Walter Hobson surrendered his license voluntarily and by stipulation after failing to keep current medical releases on file with the Board. Myron Anderson surrendered his license voluntarily and by stipulation after he refused to provide a urine sample as required. Gregg Erickson surrendered his license voluntarily and by stipulation after a complaint was filed alleging a failure to submit urine samples as required, along with nineteen counts of obtaining controlled substances contrary to the conditions on his license. La Monte Koop surrendered his license voluntarily and by stipulation after leaving the rehabilitation program at DePaul, discontinuing urine screens, failing to notify the Board of a change in employment, failing to appear before the Board, and failing to ensure that regular reports were submitted to the Board. Francis Dwan surrendered his license voluntarily and by stipulation after leaving the rehabilitation program at DePaul without notifying the Board, although he moved to Illinois and enrolled in a similar program there.

Eustace Douglas was permitted to retain his limited license, although he violated the limitations on his license by not providing all necessary reports, urine samples, and releases, and failing to appear before the board as required. Michael Helf was allowed to retain his limited certificate as a physician's assistant, despite a self-reported relapse involving two incidents of drug use. Samuel Black was permitted to retain his limited license following a single incident of self-medication, following which he obtained a valid prescription from another physician for the same drug. Richard Andringa was allowed to retain his limited license, even though required reports were not filed with the board until after the complaint was issued, and he failed to notify the board of a change of address, which resulted in a missed appearance before the board. Richard Hauser was allowed to retain his limited license despite two positive urine screens, which led to an admission that he had used cocaine, following which he re-entered treatment.

Dr. Hoftiezer's position before the Board is not that of a first offender, the majority of whom are granted limited licenses. Nor is it even that of the repeat offenders listed above, two of whom were revoked, five of whom surrendered their licenses voluntarily, and five of whom were allowed to keep their limited licenses. Dr. Hoftiezer's substance abuse problem has now come to the Board's attention three times, and that fact, along with the grossly unprofessional conduct manifested here, make it highly inappropriate for him to keep his license under any combination of limitations.

The Inter-Relationship of Depression and Substance Abuse

There is only one factor arguing for Dr. Hoftiezer's continued licensure, and it deserves serious consideration. That is Dr. Zblewski's diagnosis of Dr. Hoftiezer as having a depressive disorder, which he states is being treated successfully with medication. This is important in light of Dr. Zbleski's statement that depression and substance abuse are conditions which exacerbate each other, and his opinion that treating one can have a beneficial effect on the other. This nexus, along with the prospect of Dr. Hoftiezer's recovery from his depression, increase the probability that Dr. Hoftiezer will never again abuse alcohol or drugs. The question, however, is whether that probability is high enough to justify a decision to allow him to retain his license, and whether the favorable prognoses of Dr. Zblewski and Dr. Reed are sufficient to allay serious concerns over Dr. Hoftiezer's past behavior.

In the end, I am convinced that to view Dr. Zblewski's treatment of Dr. Hoftiezer's depression as a complete and reliable cure for his substance abuse problem would be overly optimistic. For one thing, such a view would essentially equate Dr. Hoftiezer's depression to his substance abuse problem, or at the very least it would say that his depression was the sole cause of his substance abuse. Dr. Zblewski, Dr. Reed, and Dr. Hoftiezer were all hopeful that the combination of substance abuse treatment and anti-depressant medication would lead to complete recovery, but it is clear that such a prospect is still only hoped-for rather than certain. Once his record demonstrates the long-term recovery which his current efforts augur, I anticipate that the Board will entertain a request that his license be restored, under sec. 448.02.(6), Wis. Stats., but until that time, all of the reasons for discipline dictate that his license now be revoked.

The Need for Discipline

Once a person has been found to have violated a profession's rules of conduct, the question becomes what discipline is appropriate. The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in four cases involving attorneys: State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 N.W.2d 235 (1969), State v. Corry, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct.

In my reading of those cases, the term "rehabilitation" covers both positive and negative reinforcement to deter this offender from similar behavior in the future. For example, on page 126 in Corry, the Supreme Court says "in some cases, ... the court has thought the attorney had been so affected that his rehabilitation was assured and he could continue to practice without harm to the public. In such cases a reprimand for the unprofessional conduct and the imposition of costs were deemed to be sufficient discipline." The complete list of rehabilitative factors in that case, which allowed the court to decide to issue a reprimand, was as follows: "Here, Mr. Corry was subject to extensive adverse newspaper publicity, suffered a criminal prosecution and conviction, and served a period of confinement. This resulted in the loss to such a large part of his practice, he was forced to close his law office." Thus, even though the purpose of discipline is not to impose punishment per se, appreciating the adverse consequences of unprofessional behavior is part of rehabilitation.

Dr. Hoftiezer's attorneys presented a proposed disposition (exhibit 6), which would allow Dr. Hoftiezer to retain his license, in return for more stringent limitations. The limitations currently on his license, up until the time it was suspended, are listed above in the findings of fact (#3). The additional limitations proposed by his attorneys amount to the following: (1) Dr. Hoftiezer would be restricted from using over-the-counter medications, (2) he would not be allowed to hold a DEA number, (3) he would be subject to more frequent and more immediate urine screens, (4) he would have to appear before the board more often, and (5) he would be required to continue psychiatric treatment.

The attorney for the Division of Enforcement, Mr. Thexton, basically conceded that the proposed disposition would satisfy the first and second purposes, rehabilitation and protection of the public. He apparently based his position on the assumption that Dr. Hoftiezer's depression has been cured, and that his substance abuse problem is therefore also cured. If one were to take the testimony of Doctors Zblewski and Reed in the most favorable light, and assume that Dr. Hoftiezer's depression is cured, then one might further assume that his past substance abuse behavior will never be repeated, and that the public would be adequately protected. However, an objective consideration of public safety does not permit those assumptions. If one takes the testimony of Doctors Zblewski and Reed to show that Dr. Hoftiezer's progress in controlling his substance abuse problem has been substantial, but still not complete, then the public safety is inadequately protected by the limited license proposed here.

The proposal goes a long way toward protecting the public by imposing a few more external controls, but Dr. Hoftiezer has shown how ingenious he can be at circumventing such controls, by writing false prescriptions, forging signatures, stealing drugs from friends and family, and submitting false urine samples. To paraphrase Mr. Thexton's statement in closing argument, Dr. Hoftiezer's substance abuse turned him into a liar and a thief, and the evidence is insufficient to conclude that he is incapable of such behavior again. Nor is there any reason to excuse his conduct as ignorance or inadvertance, for he was put on notice repeatedly about the potential consequences of his behavior. An especially serious concern centers on the fact that Dr. Hoftiezer has never entered treatment on his own volition. This suggests the possibility, even the probability that if he were to begin abusing again, he would not come forward voluntarily, and would continue until someone caught him or until he eventually committed an error serious enough to bring his behavior to light. External controls in the form of limits on his license can no longer be considered adequate or appropriate. The only way to ensure the safety of the public from a potentially impaired practitioner is to withdraw his license, either suspending or revoking it.

The proposed disposition also fails to provide a sufficient deterrent to others. Dr. Hoftiezer's attorneys argue that the severely limited license they propose would be a sufficient deterrent to other doctors who might be tempted to dabble in controlled substances, because it will be a "living hell" to comply with. It is true that the inconveniences imposed by the proposed limitations are great, but on the other hand, the message of such a disciplinary outcome might well be that if a doctor becomes a drug abuser, he (or she) may be forced to live with some unpleasant restrictions, but the license will never be taken away, even after a third, massive, relapse. That is hardly the deterrent message which should be sent to others. Given Dr. Hoftiezer's record, allowing him to retain his license, no matter what limitations are placed on it, would convey the wrong message to others regarding this Board's willingness to discipline based on substance abuse. In my opinion, revocation is the only way to send a sufficiently clear message to other members of the profession regarding the seriousness with which the Board views behavior such as that demonstrated by Dr. Hoftiezer. Previous decisions by the Board support the position that revocation is an appropriate disposition, even after a single violation of the conditions of a limited license, let alone following repeated violations.

Even with regard to rehabilitation, it is far from clear that severe disciplinary action would not be appropriate. Dr. Reed testified that underlying Dr. Hoftiezer's past substance abuse were feelings of narcissism, grandiosity, and entitlement, which she said are common in the medical profession. (Perhaps out of consideration for a majority of the people in the hearing room, she neglected to mention any other professional group which tends to harbor similar feelings.) It would be reassuring to think that those feelings have finally been put in their proper perspective by Dr. Hoftiezer, but there is a substantial danger that they may be reinforced or reawakened by a decision which allows him to avoid revocation yet again. Indeed, the Board's leniency in the past may have fed those very feelings which fueled his

substance abuse problem. Revocation is necessary not only to show the Board's complete disapproval of Dr. Hoftiezer's conduct, but also to promote his rehabilitation. Such an action would not be taken out of a desire to crush Dr. Hoftiezer in order to extirpate the feelings mentioned above, but all things considered, it would be unwise and unsafe to do otherwise. The Board owes a duty to Dr. Hoftiezer and to the public to take whatever actions it can to ensure that his rehabilitation is effective and complete.

For the above reasons, Dr. Hoftiezer should lose his license, and it should be revoked rather than suspended. Besides the need to send a clear message to the public and other members of the profession by revocation rather than suspension, another reason is that suspending his license for a definite period would require the Board to resolve questions now about the duration of the suspension and the conditions under which he could return to practice, which will be better answered after a demonstrated long-term recovery. It would be appropriate for the Board to consider restoring his license under sec. 448.02(6) at some time in the future, and any such application should be considered seriously by the Board after June 1992. That would be two years after the start of the most recent treatment, which was the period mentioned by Dr. Reed as necessary for treatment to be complete (transcript, p. 91). In addition, under the statutory authority of sec. 440.22, Wis. Stats., it is appropriate for Dr. Hoftiezer to reimburse the Department of Regulation and Licensing for the costs of this hearing, since this action was necessary after his license had already been limited as the result of a prior disciplinary proceeding.

Miscellaneous Points

Three additional points deserve to be addressed, even though they were not directly considered in this decision:

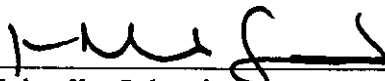
First, having heard testimony about the interplay of depression and substance abuse in this case, I am not unaware of the possibility that harsh disciplinary action may depress Dr. Hoftiezer and return him to a state where he is more likely to abuse alcohol or drugs. I reconcile this concern with my decision on two grounds: first, I believe considerations of the public interest override any obligation I or the Board may have to allow an individual licensee to continue practicing medicine, and second, Dr. Zblewski testified that Dr. Hoftiezer's depression appears to be the result of a chemical imbalance rather than the result of external events or factors, and that the chemical imbalance is being successfully treated with imipromine.

Second, although it may be totally unfair to Dr. Hoftiezer to suggest the following, I must note it as a possibility, given the facts before me. Dr. Zblewski testified that he diagnosed Dr. Hoftiezer in late June 1990 as suffering from a depressive disorder, which had gone undiagnosed since high school. Dr. Zblewski stated that a person exhibiting any four of approximately twelve symptoms would be considered clinically depressed, and that Dr. Hoftiezer exhibited all of them (pp. 11-12 of the transcript), yet

this condition had gone undiagnosed by Dr. Hoftiezer himself and by his doctors during three previous periods of treatment. The possibility suggests itself that Dr. Hoftiezer manufactured the necessary symptoms (all of which would be undetectable except through self-reporting) to mislead Dr. Zblewski, in a last-ditch attempt to save his license. If that were true, the worst thing the Board could do would be to let him succeed at such a ploy. However, I need not even address that question, as my decision to revoke Dr. Hoftiezer's license is based on an acceptance of Dr. Zblewski's testimony as given. I merely mention this possibility to show that it did not escape my notice.

Finally, respondent's attorney, Mr. Mulligan, brought out during questioning that his client was never offered the opportunity to participate in the Impaired Professionals Procedure (I.P.P.) administered by the Department of Regulation and Licensing (page 108 of the transcript). It can be noted, first, that this program only began operation in February of 1991, and second, that the conditions of participation in the I.P.P. are very similar to those which had been imposed on Dr. Hoftiezer's license prior to his most recent relapse. Therefore, the suggestion that Dr. Hoftiezer should have been allowed to avoid further discipline by participating in another diversion program, with conditions and safeguards similar to the ones he was previously under, does not require serious discussion.

Dated May 13, 1991.



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

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